IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4534 OF 2005

Shri Laxman Surajrav Chavan ..Petitioner

Vs.

Bhanudas Manik Walekar ..Respondent

Mr. R.B. Paranjape with Smt.Geeta Chavan for petitioner.

None for the respondent.

CORAM: B.H. MARLAPALLE, J.

Date : August 9, 2006.

P.C.:

1. Heard the learned counsel for the petitioner-defendant who on receiving the summons in RCS No.139 of 2004 had filed an application under Section 9A of C.P.C. raising the preliminary issue of maintainability of the suit and the said application has been rejected by the impugned order dated 19/3/2005 passed by the learned Civil Judge, Junior Division at Junnar.

2. The learned Judge of the trial court himself observed, " In my point of view, to meet the ends of

justice, it is necessary to adduce the evidence by both parties to decide the real controversy between them" and the preliminary question as sought to be prayed for is mixed question of law and fact and, therefore, it was necessary to decide the same after the parties adduce evidence and this is apparent from the earlier observation of the learned Judge which reads as under:-

> "However, the unregistered document can be used for collateral purpose. If the defendant wants to prove that the document of title of the plaintiff is forged, fraudulent then controversy of document requires to be decided after adducing the evidence."

3. Thus the trial court was aware that the preliminary issue raised by the defendant was required to be decided on the basis of the evidence that the parties may place before the court during the trial and, therefore, it was not proper to reject the

application at Exh.11.

4. The petition is, therefore, disposed off with a direction to the learned Judge of the trial court that the preliminary issue as raised will be framed and decided along with all other issues after the parties adduce evidence.

(B.H. Marlapalle,J.)